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Franchise Agreement and Its Concept, Significance, Historical Development: A Case Study in the United Arab Emirates

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Abstract

The study mainly aims to identify the nature of the franchise agreement by explaining its concept, significance, and historical development. The study also aims to show the extent to which the UAE legislator organizes the provisions of this agreement. The basic questions for the study are what is the franchise agreement, what is its significance, and how has the UAE legislator organized its provisions? The problem of the study is the ambiguity of the legal nature of this agreement and the lack of a specific law to be invoked in the event of a dispute between the parties to the agreement. The researcher uses the descriptive and analytical approach to achieve the study objectives and to find solutions to the study problem. The researcher also uses the historical approach to find out the origins of this agreement. The study concludes with several results, the most important of which are as follows. Unlike the countries of Europe, the franchise agreement has no legal regulation in the United Arab Emirates, nor in Arab countries. The study concludes that this type of contract has great significance, especially in light of the technological revolution and the accelerating global economic growth. The researcher concludes with a set of recommendations, the most important of which are as follows. The researcher urges the UAE legislator and Arab legislators to organize the provisions of the franchise agreement by issuing special legislation for this agreement due to its significance in commercial life. The researcher also recommends promoting the concept of the franchise agreement and awarding bids as part of the promotion campaign. The researcher recommends holding courses and conferences that would urge citizens, especially traders, to benefit from this type of contract.

Keywords: Franchise Agreement, Franchiser, Franchisee, UAE Legislator

Introduction

The world is witnessing a rapid and successive developments in all spheres, whether in the technological, legal, commercial, or other spheres (Alsharif et al., 2020a; 2020b; 2021e; 2021f; 2022). It is noticeable that all or most of these developments are meant to fundamentally

develop the economic and business sphere (Alsharif et al., 2021b; 2021g; 2022). Therefore, many countries conclude different agreements or treaties to create a unified economic system administered by a body or organization that sets rules and laws to organize this economic system and to ensure that there is a free economy among countries and the existence of global economic openness (Samiha, 1994). The franchise agreement is one of the significant and new contracts that has been widely used in many countries since it is an effective means of transferring technical knowledge and productive projects in a manner that achieves the objectives of the contracting parties and thus benefiting all parties. This agreement provides the franchisors with an excellent opportunity for rapid expansion without creating a financial burden on their capital expenditures.

The agreement also provides an opportunity for rapid market access. In return, this agreement will be a way to attract investments that provide advanced technology and a means to develop the local workforce through the training that it receives in the businesses established, which contributes to raising the efficiency of the manpower, reducing the proportions of funds invested abroad, and increasing investment medium-sized enterprises and brand-based enterprises. Moreover, this agreement is keen not to harm national products, but rather stimulates local companies to reorganize their business so that they can compete in a way that increases the value of their product provided to the consumer (Al-Bishtawi, 2008).

The franchise process is summarized in that a person called the franchisor, under this contract, is responsible for educating another person called the franchisee of scientific knowledge and authorizing him to use his trademark and supply him with goods, while the franchisee is responsible for investing this scientific knowledge and using the trademark (Ezzat, 2020). Given the newness of the franchise contract and its extensive spread in the economic arena, it is imperative to provide a legal climate appropriate for this type of contract by issuing a specific law for the franchise activity and working on creating specific laws for settling franchise disputes.

It is also necessary to provide legal, financial, economic administrative, and technical education to investors willing to operate under a franchise system, (Mahyaw, 2013) in this study, we review the concept of a franchise contract, its significance, its historical development, and the extent of its organization in UAE legislation.

Literature Review

The literature review is a cornerstone of any scientific study, as it helps the researchers to familiarize themselves and to understand the subject of study. Besides, it helps the researcher to know what the franchise agreement is, its significance, its historical development, and the extent to which the UAE legislature organizes it. The significance of the literature review concerning the subject of our study is evident as it provides information that contributes to assisting the researcher in developing the appropriate methodology to answer the questions of this study to achieve the objectives thereof. The most important literature review is as follows:

Al-Rashidi and Al-Mutairi (2015) in their study entitled: *The Franchise Agreement (Commercial Franchise) and its Provisions in Islamic Jurisprudence "A Jurisprudence Study Compared to Commercial Law"* addresses the origins and concept of the Franchise Agreement, its types, parties, location, its effects, and the legal resurgence of technical knowledge in the light of Islamic Jurisprudence Compared to commercial law. The two researchers use the descriptive, analytical, and comparative research methodology. The two

researchers review the Islamic jurisprudence perspective on some aspects of the franchise agreement, specifically the types and elements of this contract. However, the study does not address the perspective of positive legislation elaborately, except in some minor aspects.

The study of (Al-Shamat, 2020) entitled “Legal Characterization of the Franchise Agreement: A Comparative Study”. The study aims to identify the legal provisions to which this type of contract is subject. The two researchers state that the problem of the study is the existence of great controversy concerning the legal characterization of this contract between jurisprudence and the judiciary. The two researchers use the comparative method and the descriptive-analytical method in the study.

The study concludes that the franchise agreement has not been legally regulated in most Arab countries, unlike foreign countries in which legislative, jurisprudential and judicial efforts have combined to develop a semi-integrated legal theory for this type of contract. The study also concludes that there is a jurisprudential and judicial disagreement about the legal characterization of the franchise contract. At the end of their study, the two researchers recommend the Arab legislators to lay down a legal regulation for the franchise contract, and the necessity to clarify the legal nature of this contract.

Qudah (2015) stated in his study entitled “The Effects of a Franchise Agreement and Its Termination” that his study aims to identify the most important legal aspects related to the implications of the franchise agreement by clarifying the material and moral obligations of the franchisor. The researcher points out that the problem of the study is the lack of a legal system that clarifies the provisions of this contract and its effects on its parties, which results in the loss of rights, especially concerning the franchisee. The researcher uses the descriptive and analytical method in his study. The study concludes with many results, the most important of which is that the franchise contract is independent and has its nature and differs from other contracts, although it may be similar to some contracts in some parts. The study concludes that this contract has a set of characteristics and advantages that make it unique and different from other contracts. The study concludes with a set of recommendations. The researcher urges the Jordanian legislator to regulate the provisions of the franchise contract by issuing special legislation for this contract due to its significance in commercial life. The researcher also urges the legislator to issue a special system for registering franchise contracts to ensure the seriousness of the technical knowledge contained in these contracts, similar to what is followed in many countries.

Study Methodology

To obtain the information required to achieve the objectives of the study, the researcher uses several complementary scientific methods to get acquainted with this new system and try to get acquainted with all its aspects and details. The researcher uses the descriptive and analytical through which he collects data and information and then extracts the principles and provisions related to the franchise agreement. The researcher uses the historical method to identify the origin of this type of contract.

Framework of Study

In this study, we will review the concept of the franchise agreement, its significance, its historical development, and the extent to which the UAE legislature organizes its provisions.

Concept of a Franchise Agreement

The Franchise Agreement represents one of the most important modern contracts that has emerged at the beginning of the current century and specifically in the second half of it, but its aspects remained vague. The legal systems of various countries have sought to interpret and apply this contract in line with their national provisions. This contract did not have a specific definition. Therefore, several international institutions have sought to find a definition and a legal system for this contract due to its extreme significance, especially after the emergence of the World Trade Organization. Among these international institutions is The International Institute for the Unification of Private Law, which prepared a study on this agreement in 1986 (Al-Bishtawi, 2008).

In this part of the study, we review several definitions that are used in the context of defining the concept of a franchise agreement. These definitions are as follows.

The British Union defines a franchise agreement as: "A contract between a person called the franchiser and another person called the franchisee in such a way that during a certain period the franchiser allows the franchisee to carry out a specific work under a specific name belonging to or owned by the franchiser. According to the contract, the franchiser exercises continuous control and oversight during the term of the franchise agreement over the actions performed by the franchisee that are the subject of the franchise. The franchiser is contractually obliged to provide the franchisee with everything necessary to perform the work "subject to the franchise", especially in organizing the franchisee's work, goods, and management, as well as training the employees.

The franchisee is obligated during the contract period to pay the franchiser the franchise fees and the due commissions made by the franchisee. The International Federation defines the franchise agreement as: "A contractual relationship between two parties, the franchiser and the franchisee, whereby the franchiser is obligated to transfer technical and training knowledge to the franchisee carrying out business under a name brand or services owned or controlled by the franchiser. According to this contract, the franchisee invests his own money in the business (franchise subject). Yet, franchisee sustains all of the risks and losses (Sidr, 2018).

The French Federation defines the franchise agreement as: "a way of cooperation between the franchiser's business on the one hand and between a business or several businesses of the franchisee on the other hand. According to the franchise agreement, the business subject to the contract shall be:

1. A Business that has a head office, trade name, logo, models, images, a brand of manufacture, or service as well as technical knowledge and technical assistance.
2. A Business that is a group of products and/or services known for having innovative, standardized, and tested quality (Al-Hadidi, 2010).
3. The French judiciary defines a franchise as: "The contract by which the franchiser places his trade name, in addition to the initials, trademark, technical knowledge and a group of goods or services that are produced in original and specific ways at the franchisee's disposal. These aspects are used according to previously tested and unified technical and commercial methods, and are constantly tested and controlled by the franchiser and under his supervision (Muhammad, 2017).

In the Arab world, the Lebanese judiciary defines a franchise as: An agreement between a merchant or an industrialist who deals in wholesale trade, and between a person or a trader who deals with or wants to do retail trade independently and for his account. The company intends to facilitate the formation of a center or shop that is the property of the merchant

and gives him the right to sell goods of a well-known brand, with the right to use the company's brand, provided that the merchant refrains from selling other goods competing with this brand.

Based on the previous definitions, the franchise contract can be defined as: "a contract whereby a person called the franchisor undertakes the education of another person called the franchisee with practical knowledge, which includes the transfer of technical knowledge and the technical assistance, and the authorization to use his trademark and supply him with goods. As for the franchisee, he is responsible for investing practical knowledge, using the trademark, and receiving the goods from the supplier, in addition to the franchisee's obligation to pay the prices and to adhere not to compete against the franchisor's company and to maintain confidentiality.

The Significance of the Franchise Agreement

The franchise agreement is one of the most significant contracts that emerged in the modern era. Its significance stems from the fact that it increases and develops commercial activity and investments within the state, which in turn play a very important role in the advancement of the economies of countries. The franchise agreement also contributes to the enrichment of the franchisee, which is why many companies, individuals, as well as countries, utilize it to develop their economic field (Haji, 2017).

The significance of the franchise agreement is reflected in the fact that it is based mainly on the transfer of knowledge and technical expertise to the franchisee who in his turn uses this knowledge and technical expertise to create and develop products and services. Hence, allowing the franchisor of the technical expertise or the trademark to transfer this knowledge and the franchisee's benefit from the commercial reputation of this brand is the main reason for the spread of this contract and the reason why many institutions utilize it in the development of their companies given that this characteristic is not to be found in other contracts (Mounir, 2019).

Therefore, a large number of international companies and commercial institutions seek to have the brand and technical expertise for products that have a good reputation and widespread among consumers to be able to enter the global markets and compete strongly based on the good reputation and popularity of the products leading to the growth of the economy of the countries that support these companies and institutions (Al-Sabri, 2020).

The franchise agreement also has another aspect of significance. It is one of the mechanisms through which the integration for several projects of different types is achieved. Through this integration, countries, and companies can enter new markets, whether simple markets or strong markets, without fear of not being able to compete (Muhammad, 2012). The significance of this contract stems mainly from the fact that it provides the franchisor with both tangible and intangible benefits.

The tangible benefits are represented in the sums he gets in exchange for royalties or compensation provided by the franchisee in exchange for using the trademark or the franchisor's business system, while the intangible benefits are represented in the spread of his product and the prosperity of his commercial reputation all over the world without incurring any expenses. On the other hand, the significance of the franchise agreement for consumers is represented in the availability of products and services of a world-famous brand that enjoys a high commercial reputation and quality within those countries. According to the franchise agreement, the franchisee is obliged to produce and distribute products or provide

services with the same quality standards and conditions as the franchisor's products and services. Hence, the local consumer obtains the product or service of the same quality as the product provided by the original franchisor company.

Perhaps the greatest evidence of the significance of the franchise agreement is that its advantages are not limited to the franchisor, the franchisee, or the consumer only, but also extend to the economies of countries. This is evident through the increase in investments in all projects, whether small, medium, or large-sized enterprises which consequently results in increasing the employment of manpower, stimulating local economic agents so that they can compete, which is reflected in raising the quality of the local product and increasing in the demand and raising the efficiency of the local workforce through training and the transfer of technical expertise that the franchisor undertakes according to the terms and conditions. franchise agreement (Zamzam, 2011).

The Historical Development of the Franchise Agreement

The franchise agreement is one of the new methods replacing some commercial activities in their traditional forms. Americans reused the French term franchise, which was popular in the Middle Ages and later was forgotten. Later, this term developed at the economic and legal levels, especially in the period following the Second World War (Al-Najjar, 2007). In this part of the study, we review the emergence of the franchise agreement in the United States of America, and then the emergence of the franchise in France, and we conclude with the emergence of the franchise in some Arab countries.

The Emergence of the Franchise in the United States of America

A franchise agreement is a form of commercial transaction that has a favorable framework that enables it to develop, progress, and flourish in the United States. The franchise agreement appeared in the United States of America nearly a third of a century ago. After that, this phenomenon spread to Europe, and it is now approaching the Middle East. The franchise is an American concept of co-operation. I have identified several reasons contributing to the existence of the franchising agreement

- A. A: The franchisor's desire to develop its activity and expand the marketing cycle of its products.
- B. The vast business opportunities.
- C. Governmental support for the development of this type of business activity.

According to a statistical study of the spread of franchises in the United States of America, the results show that the United States is the pioneer in this field and has a huge experience in this system in the United States, a franchisee shop is opened every 8 minutes on every working day, and about 41% of the sectoral market sales in the United States are sold through campaigns subject to the franchise system (Al-Akkad, 2006).

The Emergence of the Franchise in France

The development of franchise agreement in France has gone through three phases.

The First Phase: the start-up phase in 1970, when four franchisors, Pingouin, Rodier, Pronuptia, and Levitan, established the Federation of Franchise and instituted the ethical system in 1972. In 1975, it became evident that institutions in the United States of America would make large investments in European markets, especially France.

The Second Phase: the phase of development and prosperity in 1980 as the development reached its peak in 1980. As soon as 1987 came, there were thousands of franchise business

networks. According to official statistics, the franchise business practically increased from 5 to 700 units in 1977, and then to 3300 units in 1988.

The Third Phase: the disaster phase. The number of franchisors increased dramatically from 1990 until 1988, and although the experiences of some of them were full difficulties, the majority were successful. However, this rapid spread was encountered by difficulties, so it began to decline. In 1990, despite the promulgation of applicable laws, the franchise began to decline, and in 1991 the number decreased. It is noteworthy that, after legal problems between France and Germany and their claims to the European Court of Justice, France decided that the court's ruling should be according to a legal rule governing the provisions of this contract. The Duban Law was subsequently issued in 1989, and then the Decree-Law was issued that defined the content of the pre-contract information document in 1991 (Ezzat, 2020). This stage was followed by the spread of the franchise agreement in the countries of the European Union, but what is worth noting is that most of these countries did not organize the franchise contract within a special law but referred it to the general rules of trade law.

The Emergence of the Franchise Agreement in some Arab Countries

On the Arab level, the franchise agreement emerged in Lebanon in 1973 by the Kentucky Fried Chicken Company, then (PepsiCo), (Hard Rock), (Hat Pizza), (MacDonald), and the gas companies and stations. Here, we point out that despite the widespread of this agreement in Lebanon, no special law was yet issued to regulate it. In the Kingdom of Saudi Arabia, studies show that Saudi Al-Tazaj restaurant has been a pioneering experience in the field of the franchise, as it has been able to spread locally and internationally, and its business has reached Indonesia in the east, America in the west, and to most Arab countries. Studies show that there are more than 100 Saudi companies in all fields that have proven successful and qualified to work with the franchise system, with the possibility that these companies will spread in the Kingdom and abroad. The volume of franchise circulation in the Saudi market is about 3 billion dollars (Ezzat, 2020). The franchise agreement has been implemented in the Arab Republic of Egypt, the Syrian Arab Republic, the State of Palestine, and other Arab countries, but its provisions have not been regulated by a special law, and the general rules of trade law have been applied regarding the franchise agreement in those countries.

Franchise Agreement in the United Arab Emirates

The franchise agreement occupies an important position in the United Arab Emirates, where several companies operating within the country operate with it. Some of these companies conclude their contracts with the franchise system. Besides, the franchising exhibitions held in the UAE and the franchise websites prove that this system continues to grow significantly in the UAE due to the existence of a legal environment, infrastructure, and an administrative and financial system capable of assimilating any new projects. Here, we point out that the UAE has the largest ports in the Middle East and the world, and thus it has the human and financial capacity that enables it to easily practice all kinds of commercial fields through franchise agreements in the best way (Taha, 2020). The transfer of knowledge and modern technology to the Emirati community demonstrates the importance of franchising for the UAE. This increases the progress of the state, raises the standard of living and services, and opens many fields of work that stimulate the existing workforce in the country at all its technical and administrative levels (Medhat, 2020).

Despite these advantages and the significance, we have given to the franchise contract at the level of the UAE, there are a set of obstacles facing the development and prosperity of the franchise agreement in the United Arab Emirates. These obstacles are as follows.

- a) The existence of a legislative deficiency as there is no special legislation that regulates the provisions of the "Franchise Agreement", as the UAE legislator applies the rules for commercial law to the franchise agreement.
- b) The Slow litigation procedures in disputes of this type of contract.
- c) There is no clear and specific form for this contract.
- d) The reluctance of a large number of parties to the contract to invoke alternative dispute resolution methods.

Conclusion

Based on the foregoing, it can be said that the Franchise Agreement is one of the innovative contracts that have become popular in many countries of the world. However, most of the legislators in the Arab countries, including the UAE legislator, has not given this contract the due consideration and only considered it as one of the commercial contracts, and thus its provisions are subject to the rules of general commercial contracts.

The study concludes with a number of findings and recommendations, the most important of which are as follows.

1. The technological revolution and the factors arising from globalization have directly affected the creation of the Franchise Agreement.
2. The United States of America was the first country to adopt this contract in its commercial activities.
3. The State of Lebanon was one of the first Arab countries to implement and ratify this contract.
4. The franchise contract is of great significance due to the affects it has on the franchisor, the franchisee, the consumer and the state.
5. This contract has not been legally regulated in the Arab countries, including the Emirates.
6. The researcher recommends the UAE legislator and Arab legislators to work on regulating the provisions of the franchise contract by issuing special legislation for this contract due to its significance.
7. The researcher recommends the Emirati legislator to stipulate the speedy settlement of disputes arising from franchise contracts, as this has the effect of enhancing the confidence of international trademark franchisors.
8. The researcher recommends holding conferences and training courses that encourage citizens and businessmen to embark on concluding this type of contract, which in turn is reflected in the country's economy.

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